

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SEPTAGON CONSTRUCTION COMPANY INCORPORATED-COLUMBIA, ET AL.,
RESPONDENTS
STOCKMAN CONSTRUCTION CORP.,
APPELLANT-RESPONDENT
vs.**

**THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF MOBERLY,
MAYOR BOB RILEY AND THE MOBERLY REDEVELOPMENT CORPORATION,
RESPONDENTS
CITY OF MOBERLY, MISSOURI and MOBERLY AREA ECONOMIC
DEVELOPMENT CORP.,
RESPONDENT-APPELLANT**

DOCKET NUMBER WD79474 (Consolidated with WD79489)

DATE: MARCH 7, 2017

Appeal from:

The Circuit Court of Randolph County, Missouri
The Honorable Scott A. Hayes, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Attorneys:

Margaret C. Eveker, for Respondent The Industrial Development Authority of the City of Moberly, et al., City of Moberly and Moberly Area Economic Development Corp

Charles S. Kramer, for Septagon Construction Company, Incorporated and Stockman Construction Corp.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENTS
STOCKMAN CONSTRUCTION CORP., APPELLANT-RESPONDENT**

v.

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RESPONDENTS
CITY OF MOBERLY, MISSOURI and MOBERLY AREA ECONOMIC
DEVELOPMENT CORP, RESPONDENT-APPELLANT**

WD79474 (Consolidated with WD79489)

Randolph County, Missouri

Before Division Three: Karen King Mitchell, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Stockman Construction Corp. appeals the summary judgment in favor of the Moberly Defendants (collectively the City of Moberly (City), Mayor Bob Riley, the Industrial Development Authority of the City of Moberly (Authority), the Moberly Redevelopment Corporation (RDC), and the Moberly Area Economic Development Corporation (EDC)) on Stockman's claims seeking damages for nonpayment of over \$349,000 of work performed for Mamtek US, Inc. on a sucralose facility within the City. Before construction was complete, Mamtek defaulted on its obligation to make bond payments and abandoned the property. Stockman's suit against the Moberly Defendants included claims for the failure of the Moberly Defendants to obtain a public works payment bond, breach of contract, and unjust enrichment. The City and the EDC cross-appeal from the judgment of the trial court denying their motion for costs incurred.

AFFIRMED.

Division Three holds:

(1) Where the undisputed facts showed that Mamtek did not provide construction services under its contract with the Moberly Defendants, Mamtek was not a contractor under section 107.170 requiring it furnish a public works payment bond. Summary judgment in favor of the Moberly Defendants on Stockman's claim for violation of section 107.170 for failing to require Mamtek to obtain a bond was not error.

(2) Where the financing agreements between the City, the Authority, and Mamtek for the sucralose facility project indicated that the contracting parties did not intent to provide Stockman with third-party rights under them, Stockman was at most an incidental third-party beneficiary

and could not maintain a cause of action seeking monetary damages against the City for violation of one of the agreements. Summary judgment was properly granted in favor of the City on Stockman's breach of contract claim.

(3) Where the undisputed facts showed that no contract existed between Stockman and the Moberly Defendants and, thus, noncompliance with section 432.070 regarding contracts with municipal corporations, Stockman's claim for unjust enrichment, a theory of implied contract, was precluded. Summary judgment was properly granted in favor of the City, the Authority, the EDC, and the RDC on Stockman's unjust enrichment claim.

(4) Where nothing in the financing agreements or applicable mechanic's lien statutes authorized an award of costs for maintaining the subject property after Mamtek's default and where the Moberly Defendants eventually disclaimed any and all right, title, and interest in the property, the trial court did not err in denying the City and the EDC's motion for costs.

Opinion by: Victor C. Howard, Judge

Date: March 7, 2017

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